

INITIAL STATEMENT OF REASONS
August 1, 2003

TITLE 14.	NATURAL RESOURCES
DIVISION 7.	SOLID WASTE
CHAPTER 4.	RESOURCE CONSERVATION PROGRAMS
ARTICLE 3.	PENALTIES, REGULATIONS, AND REPORT

GENERAL COMMENTS APPLICABLE TO STATEMENT OF REASONS

The Rigid Plastic Packaging Container (RPPC) Act of 1991 (SB 235, Hart, Chapter 769) was passed by the Legislature, was approved by the Governor on October 9, 1991, and took effect as Public Resources Code (PRC) Section 42300 et seq. on January 1, 1992. During 1993, proposed regulations were adopted by CIWMB, as required by PRC section 42325, and became effective on January 1, 1994.

The law requires every RPPC offered for sale in California to meet, on average, one of six compliance criteria. Annually, the CIWMB may require manufacturers to certify that they were in compliance with one of the options if the statewide all-container recycling rate drops below the 25% mandate. PRC Section 42322 sets out the statutory authority for assessing fines and penalties for violations of the RPPC Law. Administrative civil penalties may be assessed for violations only after a hearing is held before an Administrative Law Judge. PRC Section 42322 allows assessment of \$50,000 per violation, with a maximum annual assessment of \$100,000 for noncompliance.

Current regulations do not make specific what constitutes a violation and only offer language regarding maximum penalties allowed by law. The proposed regulations establish four clearly defined violations and an associated range of penalties up to the maximum dollar amounts specified in law.

This new penalty structure was based on violations that could be reasonably inferred from the RPPC Law. However, violations have been more precisely defined to help ensure compliance and allow for assessing appropriate penalties based on each company's circumstances. Specifically, violations were assigned a corresponding penalty range to ensure that penalties actually imposed are based on the severity and degree of violation, and are appropriately reduced through documentation of the degree of compliance achieved. Values were assigned within each specific violation and in relationship to other violations.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The CIWMB relied upon the Rigid Plastic Packaging Container Act of 1991, staff experience in implementing and enforcing the law through three compliance certification cycles, and written materials and comments received by the CIWMB leading up to and during development of the Proposed Regulations for amending Sections 17946 and 17949.

All written material relied upon will be made available for inspection and copy throughout this rulemaking process.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS AND ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

Alternatives to the proposed regulations have been considered, including a “no action” alternative. CIWMB staff has determined that the proposed structure, including identification of specific violations with the possibility of mitigation for small companies, would be more effective than the existing Board-adopted penalty criteria because it provides a more predictable and fair process for assessing penalties. These regulations will not have a significant adverse economic impact on business, or on the ability of California business to compete with businesses in other states.

CIWMB staff has determined that the proposed regulations do not pose a significant cost and/or savings to result in the creation or elimination of jobs, occupations, or businesses in California.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 17946. Who Must Certify That Compliance With This Article Is Met?

Subsection (e)

This subsection specifies the timeframe for responding to the CIWMB’s request for compliance certification. The new text is necessary because CIWMB staff discovered as a result of conducting and completing two compliance certification cycles that 60 calendar days was not sufficient for many product manufacturers to obtain all the necessary documentation. As a result, 30 calendar days is being added to the specified 60-day response timeframe to allow product manufacturers adequate time to respond.

Clarifying language is being added to specify that product manufactures may be granted an additional 30-day extension if they make the request in writing prior to the original due date and provide documentary evidence to support the request. Existing regulations specify that extensions may be granted due to corporate acquisitions, corporate reorganizations, catastrophic acts of God, or other criteria deemed acceptable upon the Board’s evaluation. Based on CIWMB staff experience conducting compliance certification cycles, the criteria are being expanded to include difficulty obtaining container information as an acceptable reason to be granted an extension.

Subsection (f)

This new subsection is necessary based on CIWMB staff experience with compliance certification cycles and because completeness of certification forms is one of the four specified violations developed as part of these proposed regulations. The new language

specifies that upon receipt of compliance certification forms, staff will review for completeness and notify the product manufacturer via certified mail of any additional information or documentation required. The product manufacturer will have 30 calendar days after the receipt of the notice from CIWMB to provide additional information or documentation.

Subsection 17946 (g)

Renumbering

Subsection 17946 (h)

Renumbering

Subsection 17946 (i)

Renumbering

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 17949 Violations and Penalties

The title of this subsection is being modified to clarify that specific violations with associated penalties are being added to the regulations.

Subsections (c)(d)(e)

The stricken text is not necessary. Deletion of the original text is done as a technical clean up to reflect legislation that made permanent the exemption of food and cosmetics (SB 1155, Chapter 754, Statutes of 1996, Maddy). The new text is necessary to reflect the addition of specific violations and their associated range of penalties.

Subsection (c)

The proposed new text is necessary to clarify what constitutes a violation for entities required by CCR Section 17946 to file compliance certification with the CIWMB and establishes the associated range of penalties for the specified violations.

Subsection (c) (1)

The proposed new text is necessary to establish that containers that do not meet the compliance requirements set forth in Section 17944 is a violation with an associated monetary penalty. In addition, the penalty structure is designed as a range to establish a minimum monetary penalty and to provide flexibility to ensure that the penalty is determined by the degree of noncompliance, as determined using the point system set forth in section 17949(d).

Subsection (c)(2)

The proposed new text is necessary to establish that late submittal of certification forms required by Section 17946 is a specified violation with an associated minimum penalty. Penalties will be assessed according to number of days late (by postmark date) as detailed in section 17949(e). This section is intended to provide clear direction and establish limits and to serve as a deterrent to late submittals in future compliance certification cycles.

Subsection (c)(3)

The proposed new text is necessary to establish that submittal of incomplete and/or inaccurate compliance certification forms is a specified violation with an associated minimum penalty. Additionally, examples of incompleteness and/or inaccuracies are provided to assist product manufacturers in determining the completeness of certification forms prior to submittal. The penalty structure is designed as a range that establishes a minimum penalty and allows flexibility to consider mitigating factors.

The proposed new text is necessary because it has been the experience of CIWMB staff that the majority of certification forms submitted are incomplete thus requiring significant staff resources to obtain the necessary information and/or documentation, creating delays and extending the certification cycles beyond acceptable timeframes for completion.

Subsection (c)(4)

This new subsection is intended to clarify that one of the identified violations is to refer Compliance Certifications submitted pursuant to CCR Section 17946 to the Attorney General if a determination is made that an entity provided false or misleading information. The proposed language specifies that referrals will occur within 30 days of discovery, and establishes the monetary penalty at up to the maximum allowed by law. This section is intended to establish clear expectations upon regulated companies that this violation may be dealt with severely.

Subsection (d)

This proposed new language specifies how the degree of noncompliance with section 17949(c)(1) and the corresponding civil penalty will be determined. A point system has been designed according to a formula that includes allocating credit, when appropriate, for partial compliance. The points earned under this system are plugged into a formula for determining the amount the associated penalty is reduced from the maximum. No penalty would be assessed for full compliance. And finally, this section is intended to ensure a civil penalty structure that is clear, understandable, and consistently applied.

Subsection (e)

This proposed new language specifies how penalties for violation of Section 17949 (c)(2), late submittal of compliance certification, will be calculated. The proposed language provides a clear, predictable, and fair method of calculating an appropriate monetary penalty for failure to submit compliance certification in a timely manner.

Subsection (f)

This subsection clarifies that the Administrative Law Judge or the Board may consider mitigating factors to reduce the monetary penalty for any of the violations specified in Section 17949. Based on staff experience and technical studies, mitigating factors that should be given consideration have been included in an effort to provide adequate examples.